Canada Industrial Relations Board Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for Decision

Canadian Union of Postal Workers,

applicant,

and

Canada Post Corporation; Pharmaprix, Shoppers Drug Mart Inc.; Les services Santé Claude Gervais Inc.; Entreprise David Tan inc.; Gestion Noura A. Shahid Inc.; Gestions Fortier-Allan Inc.; 2321-5510 Québec Inc.,

employers,

and

Uniprix Inc.; 3908852 Canada Inc.; Bishara Pharma Inc.; Société J. Lacroix Inc.; Gestion Morico Inc.; Louise Fortin Paquette Pharmacienne; Familiprix Inc.; Groupe Hébert, Ferlatte Inc.; Gingras, Hébert et Associés, Pharmaciens General Partnership; Hébert et Associé, Pharmaciens, General Partnership; Charest-Pharma Inc.; St-Louis Pharma Inc.; Pointe Ste-Foy Pharma Inc.; Hébert, Ferlatte et Associés, Pharmaciens, General Partnership; Pharmacie Sylvie Champagne Pharmacien Inc.; Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.,

interested parties.

Board file : 27977-C

Canadian Union of Postal Workers,

applicant,

and

Canada Post Corporation; Pharmaprix, Shoppers Drug Mart Inc.; Les entreprises Kim Luu Inc.; Les gestions Magdi Tebechrani Inc.; 9183-0067 Québec Inc.; Service de Gestion Jean-Michel Guillotte Inc.; 9159-8532 Québec Inc.,

employers,

and

Uniprix Inc.; 3908852 Canada Inc.; Bishara Pharma Inc.; Société J. Lacroix Inc.; Gestion Morico Inc.; Louise Fortin Paquette Pharmacienne; Familiprix Inc.; Groupe Hébert, Ferlatte Inc.; Gingras, Hébert et Associés, Pharmaciens General Partnership; Hébert et Associé, Pharmaciens, General Partnership; Charest-Pharma Inc.; St-Louis Pharma Inc.; Pointe Ste-Foy Pharma Inc.; Hébert, Ferlatte et Associés, Pharmaciens, General Partnership; Pharmacie Sylvie Champagne Pharmacien Inc.; Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.,

interested parties.

Board file : 27978-C

Canadian Union of Postal Workers,

applicant,

and

Canada Post Corporation, Pharmaprix, Shoppers Drug Mart Inc.; Gestions Lucap Inc.; 9070-4701 Québec Inc.; Carophil Inc.; Gestion Lise Hamel-Chartrand Inc.; Gestion Riteal Inc.; La corporation de gestion E.A. Michot,

employers,

and,

Uniprix Inc.; 3908852 Canada Inc.; Bishara Pharma Inc.; Société J. Lacroix Inc.; Gestion Morico Inc.;

Louise Fortin Paquette Pharmacienne; Familiprix Inc.; Groupe Hébert, Ferlatte Inc.; Gingras, Hébert et Associés, Pharmaciens General Partnership, Hébert et Associé, Pharmaciens, General Partnership; Charest-Pharma Inc.; St-Louis Pharma Inc.; Pointe Ste-Foy Pharma Inc.; Hébert, Ferlatte et Associés, Pharmaciens, General Partnership; Pharmacie Sylvie Champagne Pharmacien Inc.; Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.; Gestion H.B. Duyen Nguyen (2010) Inc.,

interested parties.

Board file : 27979-C

Canadian Union of Postal Workers,

applicant,

and

Canada Post Corporation; Pharmaprix, Shoppers Drug Mart Inc.; 9186-9750 Québec Inc.; Gestion Christian Duguay Inc.; 9195-9965 Québec Inc.; Les gestions Syl-Von Inc.; Gestion Réjean Mimeault Inc.; Entreprises AD Sidera Inc.; 9209-3152 Québec Inc.,

employers,

and

Uniprix Inc.; 3908852 Canada Inc.; Bishara Pharma Inc.; Société J. Lacroix Inc.; Gestion Morico Inc.; Louise Fortin Paquette Pharmacienne; Familiprix Inc.; Groupe Hébert, Ferlatte Inc.; Gingras, Hébert et Associés, Pharmaciens General Partnership; Hébert et Associé, Pharmaciens, General Partnership; Charest-Pharma Inc.; St-Louis Pharma Inc.; Pointe Ste-Foy Pharma Inc.; Hébert, Ferlatte et Associés, Pharmaciens, General Partnership; Pharmacie Sylvie Champagne Pharmacien Inc.; Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.,

interested parties.

Board file : 27980-C

Canadian Union of Postal Workers,

applicant,

and

Canada Post Corporation; Pharmaprix, Shoppers Drug Mart Inc.; 9013-5617 Québec Inc.; 2970-9177 Québec Inc.; 9199-8468 Québec Inc.; Entreprises Jami Elate Inc.; 7302622 Canada Inc.,

employers,

and

Uniprix Inc.; 3908852 Canada Inc.; Bishara Pharma Inc.; Société J. Lacroix Inc.; Gestion Morico Inc.; Louise Fortin Paquette Pharmacienne; Familiprix Inc.; Groupe Hébert, Ferlatte Inc.; Gingras, Hébert et Associés, Pharmaciens General Partnership; Hébert et Associé, Pharmaciens, General Partnership; Charest-Pharma Inc.; St-Louis Pharma Inc.; Pointe Ste-Foy Pharma Inc.; Hébert, Ferlatte et Associés, Pharmaciens, General Partnership; Pharmacie Sylvie Champagne Pharmacien Inc.; Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.,

interested parties.

Board file: 27981-C
Neutral Citation: 2013 CIRB **697**
October 22, 2013

The Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Patrick Heinke and Norman Rivard, Members, considered the above-noted files.

Appearances

Mr. Jean-François Beaudry and Ms. Stéphanie Lindsay, for the Canadian Union of Postal Workers;

Messrs. Luc Beaulieu and Lukasz Granosik, for the Canada Post Corporation;

Mr. Guy Lemay, Ms. Josiane L'Heureux and Mr. Guy Lavoie, for Pharmaprix, Shoppers Drug Mart Inc.;

Mr. Richard Lacoursière, for Les services Santé Claude Gervais Inc., Gestion Noura A. Shahid Inc. and Gestions Fortier-Allan Inc.;

Messrs. Christopher Deehy and Shawn Connely, for Entreprise David Tan Inc., 2321-5510 Québec Inc., 9013-5617 Québec Inc. and 2970-9177 Québec Inc.;

Ms. Sylvie Thibault, for 9070-4701 Québec Inc., 9183-0067 Québec Inc., 9159-8532 Québec Inc. and Carophil Inc.,

Mr. Paul A. Venne, for Service de Gestion Jean-Michel Guillotte Inc.;

Mr. Shai Mengui, for Gestion Lucap Inc.;

Ms. Angela Markakis, for Gestion H.B. Duyen Nguyen (2010) Inc., Gestion Riteal Inc. and 9209-3152 Québec Inc.;

Messrs. Louis-Philippe Bourgeois and Louis-Philippe Taddeo, for La corporation de gestion E.A. Michot;

Mr. Marc Charland, for Les entreprises Kim Luu Inc. and Les gestions Magdi Tebechrani Inc.,

Mr. Sylvain Lefebvre and Ms. Amélie Fahey, for Gestion Christian Duguay Inc., 9195-9965 Québec Inc., 9186-9750 Québec Inc., Entreprises AD Sidera Inc. and Gestion Réjean Mimeault Inc.;

Mr. Pierre Martel, for Les gestions Syl-Von Inc. and Entreprises Jami Elate Inc.;

Ms. Marie Garel and Mr. Jean-René Ranger, for 9199-8468 Québec Inc.;

Mr. David Banon, for 7302622 Canada Inc.;

Ms. Monique Ménard, for Uniprix Inc.;

Messrs. Philippe-André Tessier and Jean-Denis Boucher, for 3908852 Canada Inc., Bishara Pharma Inc., Société J. Lacroix Inc., Gestion Morico Inc. and Louise Fortin Paquette Pharmacienne;

Mr. Jacques Reeves, for Familiprix Inc.;

Mr. Simon-Pierre Hébert, for Groupe Hébert, Ferlatte Inc., Gingras, Hébert et Associés, Pharmaciens General Partnership, Charest-Pharma Inc., St-Louis Pharma Inc., Pointe Ste-Foy Pharma Inc. and Hébert, Ferlatte et Associés, Pharmaciens, General Partnership;

Mr. Dany Milliard, for Pharmacie Sylvie Champagne Pharmacien Inc.;

Mr. Luc Jobin, for Pharmacie Mathieu Sabourin et Mathieu Labonté Pharmaciens Inc.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I. Application for Stay of Proceedings

[1] On September 13, 2013, the Canadian Union of Postal Workers (the union) filed with the Board an application for stay of proceedings in file nos. 27977-C, 27978-C, 27979-C, 27980-C and 27981-C. The union is seeking a stay in these files pending a final decision by the Federal Court of Appeal on an application for judicial review of the Board's decision issued on July 3, 2013, in *Canada Post Corporation*, 2013 CIRB 690 (RD 690).

II. Background

[2] In RD 690, five applications for certification were filed with the Board by the union on February 26, 2010, pursuant to section 24 of the *Canada Labour Code (Part I Industrial Relations)* (the *Code*). The applications concerned employees working in the postal outlets of different Pharmaprix, Shoppers Drug Mart Inc. (Pharmaprix) drug store franchises (the franchisees). The union alleged that the Canada Post Corporation (the CPC) was the true employer of the employees concerned or, alternatively, that the CPC, Pharmaprix and the franchisees were a single employer within the meaning of section 35 of the *Code* for the purpose of each of the five files.

[3] The franchisees, Pharmaprix and the CPC raised the issue of the Board's constitutional jurisdiction. They submitted first that the operations performed in the franchisees' postal outlets came under provincial jurisdiction. They also submitted that, even if the Board were to find that the operations of the franchisees' postal outlets fell under the jurisdiction provided for under section 91(5) of the *Constitution Act, 1867* ("postal service"), the franchisees concerned were still provincially regulated businesses according to the teachings of the Supreme Court of Canada in cases such as *Tessier Ltée* v. *Quebec (Commission de la santé et de la sécurité du travail)*, 2012 SCC 23.

[4] In the course of the proceedings, the Board determined that it could not rule on the issue of constitutional jurisdiction without first identifying the true employer of the postal outlet

employees covered by the certification applications. As it indicated in RD 690, the Board was of the view that the two issues were closely related and had to be considered together.

[5] However, due to the significance of the evidence that the union indicated it had regarding the issue of the true employer in the five files, the time frames and the costs incurred, and to ensure the sound administration of justice, the Board decided that it would hear the evidence on the true employer in file no. 27977-C only. File nos. 27978-C, 27979-C, 27980-C and 27981-C were accordingly placed in abeyance as far as this issue was concerned. The union agreed with this approach.

[6] In a procedural decision issued on October 20, 2011, the Board determined that it would deal with the union's alternative application for a single employer declaration in file no. 27977-C only if it proved necessary after it ruled on the constitutional issue.

[7] In RD 690, the Board began by ruling that the operations of the franchisees' postal outlets were an integral part of the operation of the CPC's national network and that, taken in isolation, the operations of the postal outlets could be subject to derivative federal jurisdiction. The Board stated the following in this regard:

> [36] All of the above leads the Board to conclude that the operations of the franchisees' postal outlets are an integral part of the operation of the CPC's national network. As clearly explained by the Federal Court of Appeal in *TurnAround*, *supra*, the term "postal service" in section 91(5) refers to the national delivery system, which is currently either operated directly by the CPC or "managed by it through contracts with other entities." In the instant matter, the operations of the franchisees' postal outlets are carried out in compliance with the contracts signed with the CPC. While such postal outlets do not constitute a "postal service" per se, they are, as a whole, essential points of contact for the CPC.
>
> [37] The Board will look at derivative jurisdiction from a constitutional perspective a little further on. However, it wishes to emphasize here that the operations of the postal outlets, when isolated, could very well be deemed an integral part of the CPC's postal service and accordingly be subject to derivative federal jurisdiction. This could be true even though the postal outlets do not perform all of the CPC collection, transmission and delivery operations. When, for instance, the Board found in the past that the security guards at Pearson Airport formed a discrete unit that fell within derivative federal jurisdiction, there was no doubt that the security guards in question did not perform all of the operations specific to an airport. Yet that did not prevent the Board from finding that the security services they performed were vital, essential and integral to the operations of Pearson Airport and that they fell within the Board's jurisdiction (see *A.S.P. Incorporated*, 2006 CIRB 368).

[8] The Board then proceeded to consider the issue of the true employer in the context of file no. 27977-C to determine what entity was the "going concern" for the purpose of making the constitutional determination in the matter. The Board ruled that the franchisees were the true employers of the employees assigned to work in the postal outlets in question. Consequently, the

Board considered the essential operational nature of the franchisees to determine whether the operations carried out by the employees assigned to the postal outlets were federally or provincially regulated.

[9] The Board found that it did not have the constitutional jurisdiction to rule on the application for certification in file no. 27977-C. Paragraphs 86, 87, 88 and 89 of the decision read as follows:

> [86] For the reasons set out above, the Board finds that, while the operations of the franchisees' postal outlets may form an integral part of a "postal service" within the meaning of section 91(5) of the *Constitution Act, 1867*, the Board does not have constitutional jurisdiction to rule on the union's certification application in file no. 27977-C. In light of the evidence heard and the case law considered, it is clear that the franchisees are the true employers of the postal outlet employees covered by the certification application in this matter and that the drug stores are the going concerns in the instant case. The federal operations carried out in the franchisees' postal outlets account for a small portion of the franchisees' normal and habitual activities, which are those of drug stores under provincial jurisdiction. Furthermore, the franchisees' federal operations are not severable from their other operations, and the employees who perform those federal operations do not form a discrete unit that can be constitutionally characterized separately from the rest of the franchisees' operations. Therefore, the franchisees' operations as a whole remain those of drug stores and retail businesses, which by their essential operational nature, fall within provincial jurisdiction within the meaning of the *Constitution Act, 1867*. Under the circumstances, the Board does not have the constitutional jurisdiction to grant the certification application in file no. 27977-C; accordingly, the application must be dismissed.
>
> [87] The Board determined that it would not entertain the union's alternative application for a single employer declaration in file no. 27977-C unless deemed necessary after it had ruled on the constitutional issue and the issue of the true employer in this case. The Board has already found, based on the evidence heard, that the employees covered by the union's certification application are employees of the franchisees and subject to provincial jurisdiction. Therefore, the application for a single employer declaration could only be considered starting from the fact that the employees in each of the postal outlets concerned work for a provincially regulated franchisee. If the union has any additional written submissions to make concerning its alternative application for a single employer declaration in file no. 27977-C, it may file them with the Board by **September 13, 2013**. The other parties will then have **20 days** to file their responses and the union will have a further **20 days** to reply.
>
> [88] Finally, the Board asks that the union advise it as to whether or not it plans to provide any different evidence in regard to the other four files, which were placed in abeyance, that is, those numbered 27978-C, 27979-C, 27980-C and 27981-C, and asks that the union file its submissions in this regard by **September 13, 2013**. The other parties will then have **20 days** to file their responses and the union will have a further **20 days** to reply.
>
> [89] This is a unanimous decision of the Board.

[10] In RD 690, issued on July 3, 2013, the Board gave the union the opportunity to file any additional written submissions it might have concerning its alternative application for a single employer declaration in file no. 27977-C and asked that it advise it as to whether or not it planned to provide any different evidence in regard to the issue of the true employer in the other

four files, which had been placed in abeyance. It gave the union until September 13, 2013, to do so.

[11] On September 13, 2013, the union filed an application for a stay of proceedings in the said files, primarily alleging the following:

- it is difficult to see how the Board could have jurisdiction to rule on the single employer declaration applications in light of its decision in RD 690 that it does not have constitutional jurisdiction to rule on the union's certification applications;

- the decision of the Federal Court of Appeal on the application for judicial review of the decision in RD 690 "is bound to have an impact and consequences" on the single employer declaration application filed by the union "given that one of the criteria required to engage section 35 of the *Canada Labour Code* is that all of the undertakings in question come under federal jurisdiction" (translation);

- "the Board cannot rule on the issue of the true employer if it does not have constitutional jurisdiction over the certification applications. Additionally, the decision rendered by the Federal Court of Appeal is bound to have an impact on the issue of the determination of the true employer" (translation).

[12] On September 16, 2013, the Board sent a letter to the parties in which it directed the CPC and the franchisees to produce submissions within five days regarding the union's application for a stay of the proceedings. It also gave the union five days to file its reply in turn.

[13] The CPC and franchisees objected to the union's application for stay, for the reasons set out below.

[14] The CPC essentially submits the following:

- such an application "runs counter to the principles under the *Code*, the sound administration of justice and the interests of the parties in this matter" (translation);

- "the proceedings before the Board must definitely be finalized and all avenues exhausted before the judicial review process can commence" (translation);

- by filing its application for a stay of proceedings on September 13, 2013, the deadline for filing its submissions on the issues of the single employer and the true employer, the union "forewent producing any additional evidence or arguments and thereby forewent the opportunity afforded to it by the Board in its decision" (translation) of July 3, 2013; it "should be declared that the union is too late" (translation) to file additional arguments other than in regard to the stay application.

[15] Franchisees 9013-5617 Québec Inc., 2321-5510 Québec Inc., Entreprise David Tan Inc. and 2970-9177 Québec Inc. submit the following:

- the union "has not brought forward any valid reason or real impairment to explain its failure to respond to the Board's directions within the time frame set in its decision of July 3, 2013" (translation); consequently, the Board is asked to "dismiss the alternative application for a single employer declaration" (translation) in all five files and, "for the reasons set out in file no. 27977-C and on the basis of the evidence adduced, issue a decision to that same effect" (translation) in the other files, namely file nos. 27978-C, 27979-C, 27980-C and 27981-C;

- in regard to the application for a stay of proceedings, "the law on the question provides that an application for judicial review does not suspend Board proceedings that are already underway" (translation) and "to obtain a stay of proceedings, the applicant union would have to file an application in this regard with the Federal Court of Appeal" (translation);

- in any event, "the applicant union has not given any sound reason for filing an application with the Board for a stay of proceedings" (translation);

- if granted, such a stay would affect labour relations within the franchisees; there is still uncertainty in the 26 franchisees associated with the applications for certification filed since March 2010, and the franchisees "remain subject to the prohibition against changing terms and conditions of employment" under section 24(4) of the *Code*;

- "sound administration of justice requires that the issue of the certification applications be decided as quickly as possible" and a stay of proceedings "would run counter to that principle" (translation).

[16] Franchisees Les services Santé Claude Gervais Inc., Gestion Noura A. Shahid Inc. and Gestions Fortier-Allan Inc. concur with the preceding arguments made by the CPC and the other franchisees.

[17] In reply to the employers' responses, the union submits, as it did in its application for a stay, that the Board cannot rule on the issues that remain undecided given that it concluded in its decision of July 3, 2013, that it lacked constitutional jurisdiction. The union also submits the following:

- the Board should rule on the issue of the single employer declaration "only if necessary," as stated at paragraph 14 of RD 690;

- the Board has "exhausted" its jurisdiction and cannot now act as though it has jurisdiction, as that would be "contrary to its statutory authority" (translation);

- the Board ruling that it lacked jurisdiction amounted to it disqualifying itself, as "illustrated by the rule of *functus officio*," which prevents it from ruling on the other files. The union referred to the decisions of the Supreme Court of Canada in *Doucet-Boudreault* v. *Nova Scotia (Minister of Education)*, 2003 SCC 62, and *Chandler* v. *Alberta Association of Architects*, [1989] 2 SCR 848, in support of its arguments regarding the application in this matter of the rule of *functus officio*, which prevents the Board from retaining "some residual or remaining jurisdiction following a declaration of lack of jurisdiction" (translation);

- "were the Board to rule on aspects of the matter submitted to it, regarding which it has declared that it lacks constitutional jurisdiction, it would be acting in theoretical terms" (translation). According to the union, the orders that the Board could issue in those files lack the characteristics "that would enable the Board to render theoretical legal opinions" (translation);

- were the Board to rule on the issues that remain undecided, it "would be interfering with the powers of another decision-making authority that, according to the Board's own logic, handles matters under provincial jurisdiction. That would amount to a kind of usurpation of power" (translation).

III. Decision

A–Application for Stay of Proceedings

[18] This is not the first time that a party has applied to the Board for a stay of proceedings pending a decision by a court, in this case the Federal Court of Appeal. However, the Board has granted a stay only on rare occasions, when the application for judicial review was going to be heard very soon, for example, or when the application would not adversely affect one party or the other. An application before the Board does not belong to the party who files it, but affects the interests of all of the other parties involved. The principles that apply to applications to the Board for a stay have been the subject of decisions in the past.

[19] For example, in *Maritime Employers' Association* (1993), 92 di 135; and 94 CLLC 16,027 (CLRB no. 1027) (application for judicial review dismissed in *Quebec Ports Terminals Inc.* v. *Canada (Labour Relations Board)*, [1995] 1 F.C. 459; (1994) 175 N.R. 372; (1994) 29 Admin. L.R. (2d) 189; and (1994) 95 CLLC 210-010 (F.C.A.)), the Board had to rule on a stay application made as part of the preliminary arguments. The employer, Quebec Ports Terminals Inc., argued that if the Board dealt with certain applications before the Federal Court of Appeal ruled on an allegation of appearance of bias on the part of the Board, the Board would be in violation of the rules of natural justice. The Board stated the following:

> QPT's request to stay calls into question the executory nature of Board decisions that are the subject of judicial review proceedings. It is generally recognized that the filing of a judicial review application does not stay the execution of the impugned decision (*Re Cedarvale Tree Services Ltd. and Labourer's International Union of North America, Local 183* (1971), 22 D.L.R. (3d) 40 (Ont. C.A.), at pages 49-50; *Re International Woodworkers of America and Patchogue Plymouth, Hawkesbury Mills* (1976), 14 O.R. (2d) 118 (I.L.C.), at page 121; and *Re Dylex Ltd. and Amalgamated Clothing & Textile Workers Union Toronto Joint Board et al.* (1977), 17 O.R. (2d) 448 (I.L.C.), at page 450. The party disputing the validity of an order or decision must therefore comply with it, in the absence of a stay order.
>
> It is true that section 16(*l*) of the *Code* gives the Board the power to adjourn or postpone at any time proceedings before it. However, the Board's policy on this matter is generally to deny a request to stay made on the ground of current judicial proceedings. Exceptionally, the Board will grant a request to

stay in clear cases where the Court is about to render its judgment and when the delay will not prejudice the parties concerned. The reasons for this policy were enunciated by a plenary session of the Board in *House of Commons et al.* (1985), 62 di 225, 11 CLRR (NS) 43, and 85 CLLC 16,065 (CLRI no. 536):

> "The reasons for this general policy are obvious. If a party can prevent the Board from proceeding simply by launching a court challenge, the *Code*, and the rights it confers, will for all practical purposes, be undermined. The Board must, before all else, decide the issues that Parliament has mandated it to decide. If the Board is overturned in court, then obviously it must abide by that decision, but unless and until that happens the Board must assume that what it is doing is valid. A party has the right to challenge the Board for an excess of jurisdiction (s. 122 of the *Code*), but a party can hardly expect the Board to alter its conduct because of a mere allegation of jurisdictional error.
>
> It may be that, in the short run, the Board's resolve to proceed despite a party's resolve to go to court will produce unsettled labour relations. But labour peace is not the only objective of Part V of the *Code*. In some instances it may be that the rights of the parties to have the Board determine their rights under the *Code* will have to take precedence."
>
> (pages 233-234; 52; and 14,435; see also *Iberia Airlines of Spain* (1988), 72 di 222 (CLRI no. 671), page 226, and *Canadian Broadcasting Corporation* (1993), 91 di 165 (CLRI no. 1004))

(pages 141–142)

[20] Further, in *Société Radio-Canada*, 2002 CIRB 193, in the context of an application for a stay of proceedings, the Board took into account the public interest for matters that come before it when it decided to dismiss the stay application filed by the Société Radio-Canada:

> [30] The Board wishes to emphasize that an application filed under the *Code* is a procedure that follows from public legislation, in contrast to the arbitration of grievances, which is a private process and controlled by the parties. According to its statutory mandate, the Board must consider all the objectives of the legislation that governs it and not only the interests of one of the parties. The *Code* sets out the following objectives in its Preamble:
>
> > Whereas there is a long tradition in Canada of labour legislation and policy designed for the promotion of the common well-being through the encouragement of free collective bargaining and the constructive settlement of disputes;
> >
> > And whereas Canadian workers, trade unions and employers recognize and support freedom of association and free collective bargaining as the bases of effective industrial relations for the determination of good working conditions and sound labour-management relations;
> >
> > And whereas the Government of Canada has ratified Convention No. 87 of the International Labour Organization concerning Freedom of Association and Protection of the Right to Organize and has assumed international reporting responsibilities in this regard;
> >
> > **And whereas the Parliament of Canada desires to continue and extend its support to labour and management in their cooperative efforts to develop good relations and constructive collective bargaining practices, and deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all; ...**
> >
> > (emphasis added)

...

> [33] The Board's role is at the very heart of this public interest policy, and therefore plays its role with respect to all the parties to a dispute and not only with respect to the interests of the person who institutes an application involving his or her rights. Thus an application before the Board does not belong to the party who files it, but affects the interests of all the other parties involved. ...

[21] In the instant matter, it is clear that the applications for certification date back to February 2010 and that this has created uncertainty in labour relations within the franchisees concerned, not to mention the major costs that have been incurred.

[22] Further, in dealing with the five files in this matter, given the large number of franchisees involved (28), the Board took the time, with the consent of all the parties, to divide the franchisees up according to three different models precisely to simplify the evidence adduced by the parties at the hearings on the constitutional issue.

[23] In light of the foregoing, the Board is not convinced that there is any special circumstance that would warrant a stay of the proceedings. Indeed, the union has not indicated that the Federal Court of Appeal is on the verge of delivering its judgment and that the delay will not adversely affect the parties involved. In accordance with Board policy in this regard, the Board dismisses the union's application for a stay of proceedings based on the application for judicial review filed with the Federal Court of Appeal.

B–Certification Applications in File Nos. 27978-C, 27979-C, 27980-C and 27981-C and Alternative Single Employer Declaration Applications

[24] According to the CPC, by filing an application for a stay on September 13, 2013, the union forewent producing any additional evidence or arguments respecting the issues placed in abeyance prior to the decision in RD 690 being issued. The franchisees have asked the Board to dismiss the alternative application for a single employer declaration in all five files and to rule on the issue of the true employer in the other four files for the same reasons as set out in RD 690. The union, for its part, submits that the Board exhausted its jurisdiction, having declared that it lacked constitutional jurisdiction.

[25] It should be recalled that the constitutional analysis in regard to the operations of the postal outlets located in the franchisees' drug stores was done in RD 690 for all five files. In RD 690, the Board stated that the postal counter operations, when taken in isolation, could be deemed an

integral part of the CPC's postal service and accordingly be subject to derivative federal jurisdiction. It is useful to note, however, that at paragraph 11 of RD 690 the Board indicated that it could not determine the issue of constitutional jurisdiction without first identifying the true employer of the postal outlet employees covered by each of the certification applications. The determination of the true employer in file no. 27977-C was central to the Board's ruling on the constitutional issue in its decision in RD 690.

[26] As indicated previously, the Board placed file nos. 27978-C, 27979-C, 27980-C and 27981-C in abeyance and so has not as yet ruled on the issue of the true employer in those four files. That being the case, the Board considers that it did not exhaust its jurisdiction in regard to those four files, as stated by the union, because, had there been different evidence in those files from the evidence adduced in file no. 27977-C on the issue of the true employer, the Board could have found that it had the requisite constitutional jurisdiction to decide the four applications for certification placed in abeyance.

[27] However, the Board was not provided with any evidence on the issue of the true employer in the other four files that was different from the evidence adduced in file no. 27977-C by the deadline of September 13, 2013, set by the Board in its decision in RD 690. Consequently, in light of the evidence on the issue of the true employer in file no. 27977-C and the submissions of the parties in the other four files, the Board finds that the franchisees are the true employers of the employees covered by the certification applications in file nos. 27978-C, 27979-C, 27980-C and 27981-C for the same reasons as set out in RD 690. Additionally, the Board finds that it lacks the constitutional jurisdiction to allow the applications for certification in file nos. 27978-C, 27979-C, 27980-C and 27981-C and must accordingly dismiss them, for the same reasons as set out in RD 690.

[28] With regard to the alternative application for a single employer declaration, the Board indicated at paragraph 14 of RD 690 that it would deal with it only if necessary after it ruled on the constitutional issue. In view of its ruling that the operations of the franchisees are provincially regulated, the Board is unable to declare that the franchisees, Pharmaprix and the CPC are a single employer pursuant to section 35 of the *Code*. Indeed, one of the key criteria for a declaration of single employer is that each of the undertakings concerned by the single

employer declaration application be federally regulated (see *Murray Hill Limousine Service Ltd. et al.* (1988), 74 di 127 (CLRB no. 699), application for reconsideration allowed for other reasons in *Autocar Connaisseur Inc. and Murray Hill Limousine Service Ltd.* (1988), 76 di 139 (CLRB no. 723); and *Pacific Coach Lines Ltd.*, 2012 CIRB 623, application for judicial review dismissed in *National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada, Local 114)* v. *Pacific Coach Lines Ltd.*, 2012 FCA 329).

IV. Conclusion

[29] The Board accordingly dismisses the application for a stay of proceedings filed by the union on September 13, 2013. Additionally, the Board finds that, since it was not provided with any evidence that was different from that adduced in file no. 27977-C for the four files placed in abeyance, it lacks constitutional jurisdiction to allow the applications for certification in file nos. 27978-C, 27979-C, 27980-C and 27981-C and must consequently dismiss them. The Board also dismisses the alternative applications for a single employer declaration in files 27977-C, 27978-C, 27979-C, 27980-C and 27981-C.

[30] This is a unanimous decision.

Translation

Louise Fecteau
Vice-Chairperson

Patrick Heinke
Member

Norman Rivard
Member